



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

LONNIE JAMES LEWIS

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CASE NO. 1:03-CR-252

**FINDINGS OF FACT AND RECOMMENDATION ON PLEA OF TRUE  
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the District Court, Eastern District of Texas, the District Court referred this matter for hearing and the submission of findings of fact and a report and recommendation pursuant to 18 U.S.C. §§ 3401(i) and 3583(e). The United States alleges that Defendant, Lonnie James Lewis, violated conditions of supervised release imposed by United States District Judge Marcia A. Crone. The United States Probation Office filed its *Petition for Warrant or Summons for Offender Under Supervision* requesting the revocation of the defendant's supervised release.

The Court conducted a hearing on October 8, 2013, in accordance with Federal Rules of Criminal Procedure 11, 32 and 32.1. Defendant was present and represented by counsel at the hearing. Having heard the evidence, this court factually finds that the defendant has violated conditions of supervision and recommends that such violation warrants the revocation of his

supervised release.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure<sup>11</sup>, the Court finds:

a. That Defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the plea of true in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.

b. That Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and the consequences of the plea, that his plea of true is a knowing and voluntary plea, not the result of force or threats, and that the plea is supported by an independent evidentiary basis in fact establishing each of the essential elements of the conduct.

### **STATEMENT OF REASONS**

#### **A. Procedural History**

On August 17, 2004, the Honorable Marcia A. Crone of the Eastern District of Texas sentenced the defendant after he pled guilty to the offense of possession of ammunition by a convicted felon, a Class C felony. Judge Crone sentenced the defendant to 87 months imprisonment followed by 3 years supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure; drug aftercare; mental health aftercare; and a \$100 special assessment.

On December 19, 2005, the Court amended the original judgment due to a correction of sentence on remand. This changed the offense level to 14, and imprisonment range to 37 to 46 months. As such, the Court imposed a new term of imprisonment of 46 months. On March 20,

2008, Lonnie James Lewis completed his period of imprisonment and began service of the supervision term.

**B. Allegations in Petition**

The United States alleges that the defendant violated the following mandatory condition of supervised release:

*The defendant shall not commit another federal, state, or local crime.*

Specifically, on or about August 24, 2010, Mr. Lewis was arrested by Jefferson County Sheriff's Department, Beaumont, Texas, on a warrant issued by Beaumont Police Department for the offense of sexual assault - forcible rape.

**C. Evidence presented at Hearing:**

At the hearing, the Government offered the following evidence as its factual basis for the allegations set out *supra*. The Government would present documentary evidence showing that Mr. Lewis was arrested for sexual assault as stated in the petition. The evidence would further show that Lewis was ultimately convicted on this charge in the 252<sup>nd</sup> District Court of Jefferson County.

Defendant, Lonnie Lewis, offered a plea of true to the allegations. Specifically, he agreed with the evidence presented and pled true to the allegation that he committed a new state crime in violation of his supervision conditions.

**D. Sentencing Guidelines; Findings and Recommended Disposition**

The allegations, supporting evidence and plea of true warrant revocation of supervised release. *See* 18 U.S.C. § 3583(e)(3). The Court factually finds by a preponderance of the evidence that the defendant violated a mandatory condition of his supervised release by committing a new crime.

If the Court finds that Mr. Lewis violated his supervision conditions in the manner stated above, this will constitute a Grade A violation under U.S.S.G. § 7B1.1(a). Upon finding a Grade A violation, the Court shall revoke the defendant's supervised release. *See* U.S.S.G. § 7B1.3(a)(1). Based upon the defendant's criminal history category of VI and the Grade A violation, the Sentencing Guidelines suggest a sentence of imprisonment for a period ranging from 33 to 41 months. *See* U.S.S.G. § 7B1.4(a).

Because the offense of conviction in this case was a Class C felony, respectively, the statutory maximum imprisonment term upon revocation is two years. *See* 18 U.S.C. § 3583(e)(3). Accordingly, the maximum term of imprisonment that Court can impose for the revocation is capped at two years.

The Fifth Circuit states that Chapter 7 of the Sentencing Guidelines regarding the revocation of supervised release is advisory only. *See United States v. Cade*, 279 F.3d 265, 271 n.2 (5<sup>th</sup> Cir. 2002) (citing *United States v. Montez*, 952 F.2d 854, 859 (5<sup>th</sup> Cir. 1992); *United States v. Headrick*, 963 F.2d 777, 782 (5<sup>th</sup> Cir. 1992)). Because Chapter 7 was promulgated as an advisory policy statement and there are no applicable guidelines for sentencing after revocation of supervised release<sup>1</sup>, the Court may impose a greater or lesser sentence upon revocation. *United States v. Gonzalez*, 250 F.3d 923, 925 (5<sup>th</sup> Cir. 2001). Further, a sentence imposed for revocation will be upheld unless it is in violation of the law or plainly unreasonable. *Id.* *See also United States v. Pena*, 125 F.3d 285, 288 (5<sup>th</sup> Cir. 1997) (citations omitted).

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<sup>1</sup> *See U.S. Sentencing Guidelines Manual*, Ch. 7, pt. A, cmt. 1 ("At this time, the Commission has chosen to promulgate policy statements only.")

Here, the evidence and the defendant's own admission supports a finding that the defendant committed a new crime in violation of his supervision conditions. Mr. Lewis voluntarily pled true, agreed with the Court's recommended sentence for that violation, and waived his right to allocute before the District Court. *See Consent to Revocation of Supervised Release and Waiver of Right to Be Present and Speak at Sentencing* (doc. #92).

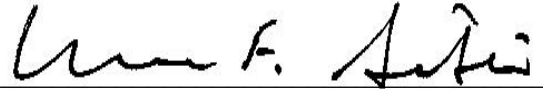
Accordingly, based upon the defendant's plea of true, the agreement of the parties, and the evidence presented in this case, the undersigned United States Magistrate Judge recommends that the District Court accept the plea of true and revoke Defendant's supervised release. The undersigned magistrate judge recommends that the District Court order Defendant to serve a term of **twenty-four (24) months imprisonment** for the revocation, with no further supervision upon release.

### **OBJECTIONS**

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. *See* 28 U.S.C. § 636(b)(1). A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5<sup>th</sup> Cir. 1988), and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court, *see Douglass v. United Servs. Auto. Ass'n.*, 79 F.3d 1415, 1417 (5<sup>th</sup> Cir. 1996) (en banc). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual evidence and not merely by reviewing and blindly adopting the magistrate judge's report and

recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5<sup>th</sup> Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5<sup>th</sup> Cir. 1981) (per curiam).

**SIGNED this the 16th day of October, 2013.**

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE